C. DUKES SCOTT
EXECUTIVE DIRECTOR

DAN F. ARNETT
CHIEF OF STAFF

1441 Main Street, Suite 300
Columbia, SC 29201

Main Line: 803-737-0800
Legal Department: 803-737-0877

FLORENCE P. BELSER
GENERAL COUNSEL

April 27, 2005

VIA HAND DELIVERY

Charles L.A. Terreni, Esquire
Chief Clerk/Administrator
South Carolina Public Service Commission
101 Executive Center Dr., Suite 100
Columbia, SC 29210

Re: Application of Midlands Utility, Inc. for an approval of New Schedule of Rates and Charges for Sewage Service provided to its customers in Richland, Lexington, Fairfield and Orangeburg Counties.
PSC Docket No.: 2004-297-S

Dear Charles:

Enclosed for filing please find thirteen (13) copies of the Petition for Rehearing and/or Reconsideration and Motion for Clarification in the above referenced matter. Please date stamp the extra copy enclosed and return it via our courier.

Also, we have served a copy of this filing on the Counsel for the Applicant and enclose a Certificate of Service to that effect.

Please let me know if you have any questions.

Very Truly Yours,

Florence P. Belser

FPB/rng
Enclosures

cc: Charles Cook, Esquire

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FLORENCE P. BELSER
GENERAL COUNSEL

April 27, 2005

Charles Cook, Esquire
Elliott & Elliott, P.A.
721 Olive Street
Columbia, South Carolina 29205

Re: Application of Midlands Utility, Inc. for an approval of New Schedule of Rates and Charges for Sewage Service provided to its customers in Richland, Lexington, Fairfield and Orangeburg Counties.
PSC Docket No.: 2004-297-S

Dear Charles:

Please find enclosed and served on you one copy of the Office of Regulatory Staff's Petition for Reconsideration and/or Rehearing and Motion for Clarification in the above-referenced matter.

If you have any questions, please feel free to contact me.

Very Truly Yours,

Florence P. Belser

FPB/mg

Enclosures
cc: Charles L.A. Terreni, Esquire

BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2004-297-S

IN RE: Application of MIDLANDS UTILITIES, INC. for an Approval Of New Schedule of Rates and Charges For Sewage Service Provided to its Customers in Richland, Lexington, Fairfield and Orangeburg Counties.

CERTIFICATE OF SERVICE

This is to certify that I, Cindy Clary, an employee with the Office of Regulatory Staff, have this date served one (1) copy of the **OFFICE OF REGULATORY STAFF'S PETITION FOR RECONSIDERATION AND/OR REHEARING AND MOTION FOR CLARIFICATION** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

Charles Cook, Esquire
Elliott & Elliott, P.A.
721 Olive Street
Columbia, South Carolina 29205

Cindy Clary

Cindy Clary

April 27, 2005
Columbia, South Carolina

173772

BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2004-297-S

IN RE: Application of Midlands Utility, Inc. for Approval of New Schedule of Rates and Charges For Sewerage Sewerage Service Provided to its Customers in Richland, Lexington, Fairfield and Orangeburg Counties.	))))))	**PETITION FOR REHEARING AND/OR RECONSIDERATION AND MOTION FOR CLARIFICATION**

The Office of Regulatory Staff ("ORS"), pursuant to S.C. Code Ann. §§ 58-5-330 and 1-23-310, et seq. (as amended) and the applicable rules and regulations of the Public Service Commission of South Carolina ("Commission"), requests that the Commission grant rehearing and/or reconsideration of certain matters addressed in Order No. 2005-168, issued on April 6, 2005 in the above-referenced docket. In addition, ORS requests that the Commission provide clarification with respect to one issue contained in Order No. 2005-168. ORS received the Order on April 7, 2005. In support of this Petition and Motion, ORS states as follows:

I. Introduction

On April 6, 2005, the Commission issued its Order No. 2005-168 in this docket setting forth new rates for Midlands Utility, Inc. ("Midlands") to charge its wastewater customers pursuant to a two-phased plan ("Phase-I" and "Phase-II"). The Phase-I rate increase is to be implemented "during construction" of proposed upgrades to treatment facilities of Midlands. The Phase-II rate increase is to be implemented after Midlands' construction and after meeting

certain requirements. These requirements include Midlands being audited by ORS, having expended a minimum of $1,168,850 in treatment plant upgrades, being in compliance with DHEC regulations and requirements, and maintaining its books in accordance with the NARUC Uniform System of Accounts. ORS does not contest the Commission's decision to grant rate relief to Midlands in a two-phased approach. ORS also does not contest the Commission's requirement that Midlands be in compliance with DHEC regulations and requirements or that Midlands maintain its books and records according to the NARUC Uniform System of Accounts prior to Phase-II of the rate increase. ORS, however, requests that the Commission rehear or reconsider the following issues:

(1) the amount of service revenues approved in Order No. 2005-168 for Phase-I and for Phase-II,

(2) the amortization period for rate case expenses,

(3) the depreciation rates and service life attributed to the proposed wastewater treatment facility upgrades,

(4) the increase in Plant Expansion and Modification fees,

(5) the timeframe set forth for Midlands to post the required performance bond, and

(6) the allowance and/or the amount allowed for (a) Officer Salaries expense and (b) Interest Expense under Phase-II.

Finally, ORS seeks clarification from the Commission concerning the time frame for Midlands to comply with its review of all deposits on customer accounts as well as the interest adjustments and refunds on customer deposits.

II. Requests for Rehearing and/or Reconsideration

ORS as a party to these proceedings as mandated by S.C. Code Ann. Section 58-4-10 (Supp. 2004) respectfully petitions the Commission for rehearing or reconsideration of the matters and issues discussed herein. ORS respectfully asserts that the below-listed matters as

resolved in Order No. 2005-168 constitute error in violation of either constitutional or statutory provisions and are clearly erroneous in view of the reliable, probative and substantial evidence of record in violation of Chapters 3 and 5 of Title 58 and Chapter 23 Title 1 of the *Code of Laws of South Carolina*. In addition, ORS respectfully asserts that the resolution for these matters as contained in Order No. 2005-168 and as specified below are arbitrary and capricious or an abuse of discretion or a clearly unwarranted exercise of discretion. Finally, ORS respectfully asserts that concerning the matters raised herein the Commission's order does not meet the requirements of S.C. Code Ann § 58-3-250 (Supp. 2004) which requires orders of the Commission contain sufficient detail to enable review on appeal. S.C. Code Ann. § 58-3-250 (Supp. 2004) requires orders of the Commission to include "findings and conclusions, and the reasons and bases therefore, upon all material issues of fact or law presented in the record." Accordingly, ORS respectfully seeks rehearing or reconsideration of the following matters addressed in Order No. 2005-168:

A. The Commission Erred In Approving An Increase In Phase-I Service Revenues of $389,057.

In Order No. 2005-168, the Commission found an increase in Phase-I service revenues of $389,057 appropriate. Order No. 2005-168, p. 7, Finding of Fact 4. This amount of increase for Phase-I revenues approved by the Commission is not supported by the record, and therefore, the Commission's approval of such an amount is arbitrary and capricious and an abuse of discretion by the Commission. Order No. 2005-168 fails to provide any citation to the record for such an increase amount by either party. In fact, Midlands indicated that the Phase-I increase would produce additional revenues of $316,238. Hearing Exhibit 15, p. 4, Adjustment 40. ORS witnesses presented evidence that the proposed Phase-I increase resulted in additional revenues

of $323,809. Hearing Exhibit 15, p. 4, Adjustment 40; Tr. p. 221, ll. 8-10. Despite the evidence from the record as to the additional Phase-I revenues, the Commission found Phase-I revenues of some $65,248 more than the evidence presented by ORS and some $72,819 more than the evidence presented by Midlands. In addition, there is no explanation as to why the Commission rejected the calculated service revenues of either party. While the Commission states that it utilized the SFEs computed by ORS and Midlands' current billing practices, the Commission provided no explanation for rejecting the service revenues reflected in the record. Order No. 2005-168, p. 37. Thus, the Commission's approved increase in Phase-I revenues of $389,057 is not supported by the evidence of record and is not sufficiently explained in Order No. 2005-168.

B. The Commission Erred By Adjusting Service Revenues Associated with Phase-II in the Amount of $36,564.

The Commission approved an increase in Phase-II service revenues of $36,564. The record before the Commission reveals a Phase-II service revenue adjustment by Midlands of $35,150 and by ORS of $35,200. Hearing Exhibit 15, p. 4, Adjustment 44. The Commission's approved increase for Phase-II revenues is not supported by the record, and therefore, the Commission's approval of such an amount is arbitrary and capricious and an abuse of discretion by the Commission. Order No. 2005-168 fails to provide any citation to the record for the increase approved by the Commission. In addition, the Commission fails to provide any explanation as to why both parties' adjustments were rejected in lieu of an adjustment not supported by the record, not contained in the record, and not sufficiently explained in Order No. 2005-168.

C. The Commission Erred In Approving An Increase In Officers' Salaries.

The Commission found that an increase in Officers' Salaries should be approved because "[t]he record reflects that Mr. Ken Parnell has performed numerous engineering duties for the

Company and has been heavily involved in obtaining financing and providing planning and engineering expertise related to new treatment plants." Order No. 2005-168, p. 10. Despite the Commission's finding, the record in this case reflects that there was no increase in salary during the test year, that no increase in salary was made outside the test year, and further that Midlands had no reflection in its books and records of such a salary adjustment. Thus, Midlands' proposal to increase salaries in the amount of $19,808 does not reflect a known and measurable change. ORS did not propose an adjustment to Officers' Salaries because no salary increases were given during the test year and, therefore, no adjustment was necessary. Tr. p. 259, ll. 14-16; p. 287, ll. 15-19; Hearing Exhibit 15, p. 1, Adjustment 3. Because no salary increase was given during the test year, made following the test year, or reflected in Midlands' records through the use of an accrual, an increase in officer's salary is not verifiable and does not reflect a known and measurable change. Tr. p. 287, ll. 15-19; p. 299, l. 23 – p. 300, l. 4. Stating intent to do something does not constitute a known and measurable change because in reality the action may never occur. ORS is not implying or taking a position on whether a salary increase is deserved; however, ORS does take the position that the salary increase should not be approved in the present rate case because there has been no justification of the salary increase being awarded, either during the test year or after the test year. Tr. p. 299, l. 23 – p. 301, l. 12. Accordingly, approval of a salary increase when there is no documented increase in salary is error, and the adjustment for an increase in Officers' Salaries should have been disallowed by the Commission.

D. The Commission Erred In Amortizing Rate Case Expenses Over A Three-Year Time Period.

The Commission erred in approving a three year amortization period for the recovery of rate case expenses. Order No. 2005-168, pp. 25-27. The record clearly shows that Midlands' previous two rate case proceedings were in 1991 and 1997, which results in an average of

approximately seven (7) years between rate cases. Tr. p. 265, ll. 19-22; p. 283, ll. 7-14. Midlands' position that three years is the standard amortization period used for rate case expenses that has been approved by the Commission in the past is not sufficient legal justification for use of a three year amortization period. The Commission cannot make an adjustment based merely on past Commission practice. *Hamm v. South Carolina Public Service Comm'n,* 309 S.C. 282, 422 S.E.2d 110 (1992). An appropriate method to use in setting the amortization period for recovery of rate case expenses is to examine the time incurred between rate cases. In *Mississippi Public Service Commission v. Coast Waterworks, Inc.,* 437 So.2d 448 (1983), the Supreme Court of Mississippi stated

> Since utilities normally do not apply for an increase each year, the total cost for preparing the rate case should not be allowed in the test year. Instead, the cost should be amortized over a number of years reasonably representing the period, as shown by experience, between applications for a rate increase.

ORS witness Barnette proposed a five year amortization period as a reasonable period in which to recover the rate case expenses incurred in the present rate case. In recommending a five year amortization period, Mr. Barnette acknowledged that the average period between Midlands' last three rate cases was approximately seven years, but he recommended an amortization period of five years as a more reasonable period in which to recover the expenses. Tr. p. 265, ll. 19-22; p. 283, ll. 7-14. The Commission should allow the $41,676 in rate case expenses to be recovered over a five year period for an adjustment of $8,335. The five year amortization period is a reasonable period for Midlands to recover these expenses without causing undue hardship on the ratepayers, and the five year amortization period more appropriately reflects the period in which Midlands has filed rate cases than the three year amortization period proposed by Midlands.

Midlands asserted two points in seeking a three year amortization period, and neither point raised by Midlands provides sufficient legal justification for a three year amortization of rate case expenses. First, Midlands asserted that three years is the standard amortization period used for rate case expenses that has been approved by the Commission in the past. This rationale requests that the Commission adopt an adjustment based purely on past Commission practice which is at odds with South Carolina case law and is thus a legally insufficient basis on which to grant relief. Second, Midlands asserted that a five year amortization period penalized Midlands for not seeking rate relief more often. Tr. p. 30, l. 13; p. 36, ll. 17-22. ORS asserts that this rationale is also an insufficient basis upon which to approve a three year amortization period. Midlands is the only entity which determines when to seek rate relief. Midlands cannot be the one to control the timing of rate cases and then complain that it is being punished when the actual period between rate cases does not suit Midlands. Midlands is not being punished; to the contrary, Midlands is being held responsible for its past actions and its present actions by requiring Midlands to present some justifiable, rational basis for its proposal other than an assertion "that three years should be approved as the amortization period because that is what the Commission always does." ORS asserts that the record does not support recovery of rate case expenses over a three year amortization period because the record clearly reflects that Midlands' proposed three year amortization period is not supported by a legally sufficient explanation and is not related to any objective measure such as the period of time between Midlands' rate cases.

E. The Commission Erred By Allowing A Twenty-Five Year Service Life For the Entire Treatment Plant.

In Order No. 2005-168, the Commission found that the wastewater treatment facility is a combination of several different components and found that a twenty-five year service life for the entire treatment plant is fair and reasonable. Order No. 2005-168, p. 41. In reaching its

decision, the Commission indicated reliance upon the two letter letters offered by Midlands from Mr. Jim Stanton from Interstate Utility Sales and Mr. Anthony R. Combs from Combs & Associates, Inc. Hearing Exhibit 7. However, the letters from Mr. Stanton and Mr. Combs do not provide conclusive evidence of a twenty-five year service life. In addition, the two letters should not be given probative value or exclusively relied upon by the Commission as the letters are hearsay.

Mr. Stanton stated in his letter that "while the steel or concrete structure may last longer than twenty years if properly maintained, the internals of a plant will require replacement before twenty years." *Id.* First, it should be noted that this letter from Mr. Stanton discusses wastewater treatment facilities in general and does not specifically discuss the upgrades proposed by Midlands. Second, Mr. Stanton clearly states that certain portions of the facility, such as the structure, may last longer than twenty years. Because Midlands has chosen to use the average service life, or group plan, method of depreciation, the entire system as a whole, i.e. the structure plus all internal components, must be depreciated together based on the average of the service lives of the individual components. According to the National Association of Regulatory Utility Commissioners Public Utility Depreciation Practices (August 1996), the group plan of depreciation accounting is particularly adaptable to utility property. "Rather than depreciating each item by itself (unit depreciation) or depreciating one single group containing all utility plant, a group contains homogenous units of plant which are alike in character, used in the same manner throughout the utility's service territory, and operated under the same general conditions." National Association of Regulatory Utility Commissioners Public Utility Depreciation Practices, p. 19. NARUC acknowledges there will be different lives for individual

units within groups; however, the average service life for the group takes into account those individual service lives.

Mr. Stanton recognizes that while certain components have shorter life spans, other components have much longer life spans. Considering the wastewater treatment facility is a combination of several different components, it is unclear from Mr. Stanton's letter whether the average service life of the facility should be twenty years or not. Therefore, ORS asserts this letter is inconclusive and should not be considered by the Commission as authoritative.

The letter from Mr. Combs is similarly unpersuasive. Mr. Combs states that he "represent[s] the wastewater treatment plant equipment that [Mr. Parnell has] drawn and specified for the Bush River Wastewater Treatment Plant... [and] that a twenty year design life is our industry standard for this equipment." While it is possible that Mr. Combs is referencing the equipment that will be installed in the facility, it is apparent from Midlands' other exhibits that Mr. Combs does not testify as to the facility's structure or to the facility as a whole. ORS asserts that this letter is inconclusive and should not be considered by the Commission as authoritative.

ORS urges the Commission to adopt NARUC's recommendation to follow the Florida Public Service Commission Water and Wastewater System Regulatory Law for service life and depreciate the plant over 32 years. See Hearing Exhibit 11 (Florida PSC Water and Wastewater System Regulatory Law). As revealed in Hearing Exhibit 11, the depreciation of assets and the grouping of assets are grouped according to the NARUC Uniform System of Accounts. Depreciation service lives have been determined for various types of equipment and through grouping of assets applied to the various accounts contained in the NARUC Uniform System of Accounts. As testified to by ORS witness Morgan, depreciation is "the loss in service value not

restored by current maintenance incurred in connection with the consumption or prospective retirement of utility plant in the course of service from causes that are known to be in current operation and against which the utility is not protected by insurance." Tr. p. 169, ll. 20-23. The definition of depreciation is revealing in itself as depreciation is a function of the corresponding service life for an asset or group of assets (such as assets grouped within the various accounts of the NARUC Uniform System of Accounts) so that the loss or reduction in service value not restored through maintenance is what is being recovered through depreciation.

It is certainly interesting that Midlands and ORS disagree with respect to the depreciation expense of the proposed upgrades given that ORS had questioned Midlands' maintenance of present facilities and had taken exception to Midlands' failure to utilize the NARUC Uniform System of Accounts as required by the Commission's regulations. Depreciation expense is the recovery of the cost of the asset as the asset is being used over the life of the asset and could be defined as the periodic change to expense to allocate the original cost of an asset or group of assets over the life of the asset or group of assets. The grouping of assets as described in the NARUC Uniform System of Accounts and the application of service lives pursuant to a readily available schedule such as provided in the testimony of ORS witness Morgan would lend to proper depreciation expense in an amount fair to both the utility and the consumer.

ORS requests that the Commission rehear or reconsider its reliance on the letters solicited from sellers of assets and instead rely on a method of calculating depreciation utilizing established service lives of assets being applied in the regulatory environment of at least one other state and which draws from classification or grouping of assets using the NARUC Uniform System of Accounts, which is the accounting system for wastewater utilities required by the Commission's own regulations.

F. The Commission Erred By Using Interest Synchronization to Calculate Interest Expense After Construction.

On pages 43-44 of Order No. 2005-168, the Commission approved Interest Expense After Construction of $46,078. Midlands had requested an adjustment for Interest Expense After Construction of $40,485; ORS proposed an adjustment of $38,434. Despite the evidence presented by the parties, the Commission found that interest synchronization should be used to calculate interest expense and approved an adjustment of $46,078.

First and foremost, the Commission's approved interest expense adjustment is in error because the approved adjustment is unsupported by the record. Second, the Commission provides no explanation for departing from the record and using interest synchronization as the appropriate method to determine Interest Expense After Construction. Third, the Commission imputes a hypothetical capital structure with no explanation as to why that particular hypothetical capital structure is appropriate.

Because the use of interest synchronization is not supported by the record and the chosen hypothetical capital structure is not supported by the record or explained by the Commission, ORS requests rehearing or reconsideration of this issue and that upon rehearing or reconsideration the Commission approve ORS' proposed adjustment for Interest Expense After Construction of $38,434. ORS' proposed adjustment was derived by removing calculated interest associated with Customer Deposits of ($2,051) from Midlands' proposed adjustment of $40,485 that was contained in the application. Tr. p. 272, ll. 3-7; Hearing Exhibit 15, p. 5, Adjustment 50.

G. The Commission Erred In Approving An Increase In Plant Expansion And Modification Fees.

The Commission approved an increase in Plant Expansion and Modification Fees from $250 to $500. Order No. 2005-168, p. 48, Finding of Fact No. 13. In the discussion of Tap Fees in Order No. 2005-168, the Commission specifically found "that the hearing record does not support the proposed increase in plant expansion and modification fess." *Id.* Notwithstanding the Commission's acknowledgement that the record did not support the increase in plant expansion and modification fees, the Commission approved an increase in Midlands' Plant Expansion and Modification Fee.

ORS asserts that the Commission's decision to increase the Plant Expansion and Modification Fee is unsupported by the record, is contrary to the specific finding of the Commission, is arbitrary and capricious and an abuse of discretion, and is not sufficiently explained in Order No. 2005-168.

H. The Commission Erred By Not Requiring Midlands To Post Immediately The Statutorily Required Performance Bond.

By Order No. 2005-168, the Commission held that Midlands shall post a performance bond with a face value of one hundred thousand dollars ($100,000) by the earlier of November 29, 2005, or completion of construction at any of its new treatment facilities. Order No. 2005-168, p. 50. ORS agrees with the Commission's determination that Midlands' current $50,000 bond is insufficient and does not meet statutory requirements. However, the Commission erred by not requiring Midlands to obtain the bond, which is required by statute, immediately.

S.C. Code Ann. Section 58-5-720 provides in relevant part

> *The commission shall*, before the granting of authority or consent to any water or sewer utility regulated by the commission, for the construction, operation, maintenance, acquisition, expansion, or improvement of any facility or system, *prescribe* as a condition to the consent or approval that the utility shall file with the commission a bond with sufficient surety, as approved by the commission, *in an amount not less than one hundred thousand*

> *dollars and not more than three hundred fifty thousand dollars* payable to the commission and *conditioned upon the provision by the utility of adequate and sufficient service within its service area* .... [Emphasis added]

26 S.C. Code Ann. Regs. 103-512.3 states:

> *Prior* to operating, maintaining, acquiring, expanding or improving any utility system, for which Commission approval is required, the utility shall have on file with the Commission a performance bond with sufficient surety.... [Emphasis added].

26 S.C. Code Ann. Regs. 130-512.3.1 provides guidance in designating a sufficient surety amount within the minimum and maximum limits and states in part:

> Based upon the expenses of the utility as submitted in the annual report and as reviewed and adjusted by Staff, the Staff shall make recommendations for increasing or reducing the amount of the bond within the minimum and maximum limits as prescribed by statute.

It is undisputed that Midlands is a sewer utility "operating" in Richland, Lexington, Fairfield, and Orangeburg Counties. Order No. 2003-168, p. 3. The record also clearly shows that Midlands is undertaking "improvements" to its system. As an "operating" utility and a utility undertaking "improvement" of its facilities and system, Midlands is required by South Carolina statutory law and the Commission's own regulations to have a minimum bond of $100,000 prior to the "operating" or "improving" of its utility system. S.C. Code Ann. §58-5-720 very clearly requires a bond in an amount not less than one hundred thousand dollars and not more than three hundred fifty thousand dollars. Because Midlands currently has only a $50,000 bond, it is not in compliance with South Carolina law at the present time. The statute requiring a minimum bond of $100,000 became effective on June 1, 1999. The bond is required to ensure that the utility provides adequate and sufficient service to its customers. Thus, it may be said that the bond is required as protection for the public and the public interest. Unlike the

Commission's regulations, which the Commission, by virtue of 26 S.C. Code Regs, 103-501(3), may waive upon a showing that "compliance with any of the [se] rules and regulations introduces unusual difficulty" and "a finding by the Commission that such waiver is in the public interest," the Commission has no authority to waive a statutory requirement. Because the Commission may not waive the requirements of S.C. Code Ann. § 58-5-720 (Supp. 2004), Midlands, as an "operating" utility and a utility undertaking "improvements", must post a bond with sufficient surety in an amount not less than $100,000 and not more than $350,000. Midlands should not be allowed to wait and post the required performance bond "by the earlier of November 29, 2005, or completion of construction at any of its new treatment facilities." Order No. 2005-168, p. 54. Instead, Midlands should be required to comply with the statutory requirements of S.C. Code Ann. § 58-5-720 (Supp. 2004) and to post the required bond within an immediate time period.

It is a violation of S.C. Code Ann. § 58-5-720 (Supp. 2004) for the Commission to allow Midlands to operate and undertake improvements to its system without having posted the statutorily mandated and required bond. ORS requests that the Commission rehear or reconsider its order that Midlands "post a performance bond of $100,000 by the earlier of November 29, 2005, or completion of construction of any of its new treatment facilities" and require that Midlands post the bond within a maximum of thirty (30) days of the issuance of the Commission's Order. Requiring Midlands to post the bond immediately or within a reasonable number of days would comply with the statute and provide the protection of Midland's customers as required by the statute.

III. Motion for Clarification

ORS moves and requests that the Commission clarify Order No. 2005-168 with respect to the timeframe under which Midlands is to review all customer deposit accounts and by which Midlands is to adjust and/or refund deposits with the proper accrued interest.

In Order No. 2005-168, the Commission found that Midlands should review all customer deposit accounts and that if the account is found not to meet the deposit retention criteria of the Commission's regulations that Midlands should adjust/refund the deposit with accrued interest. Order No. 2005-168, pp. 50-51. The Commission also required that Midlands shall comply with the Commission's Order 2003-593 and adjust the interest rate for customer deposits from 8% to 3.5% effective January 1, 2004 and that Midlands calculate interest at the rate of 8% for those customer deposits which Midlands retained prior to December 31, 2003. The Commission further ordered that Midlands review all customer deposits and adjust/refund proper accrued interest to all accounts. If the account does not meet the deposit retention criteria, then Midlands shall adjust/refund each deposit with proper accrued interest to the customer. Midlands shall also adjust/refund proper accrued interest for those accounts where it is acceptable to continue to retain the deposit. Midlands shall refund interest on customer deposits at least every two years and at the time the deposit is returned. *Id.*

ORS requests that the Commission state the timeframe by which Midlands shall review all deposits, adjust/refund proper accrued interest to all accounts, and notify the Commission and ORS of the actions taken with respect to reviewing the deposits and adjusting and/or refunding deposits and accrued interest. ORS requests parameters on the scope of the review and requests that Midlands file, with the Commission and ORS, a written report of its review of its customer deposits, adjustments and refunds made, and deposits retained. ORS witness Hipp recommended

that the Commission require Midlands to review all customer deposit accounts and adjust/refund customer deposits and accrued interest by close of fiscal year 2004-2005. Tr. p. 216, ll.1-9. ORS therefore requests that the Commission clarify Order No. 2005-168, to reflect the recommendation of a definite timeframe as proposed by ORS witness Hipp and as contained in the record of this case.

WHEREFORE, having fully set forth its grounds for this Petition and Motion, ORS respectfully requests that the Commission grant rehearing or reconsideration of Order No. 2005-83, as set forth herein, grant the Motion for Clarification of Order No. 2005-168, and grant such other relief as the Commission deems just and proper.

Florence P. Belser, Esquire
Wendy B. Cartledge, Esquire
Office of Regulatory Staff
P.O. Box 11263
Columbia, South Carolina 29211

April 27, 2005